

36156

SERVICE DATE – SEPTEMBER 23, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34749]

Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen—
Continuance in Control Exemption—Morehead & South Fork Railroad Co., Inc.

Gulf & Ohio Railways Holding Co., Inc. (G&O), and H. Peter Claussen and Linda C. Claussen (the Claussens) (collectively applicants), have filed a verified notice of exemption to continue in control of Morehead & South Fork Railroad Co., Inc. (MHSF), upon MHSF's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or after September 1, 2005.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34748, Morehead & South Fork Railroad Co., Inc.—Acquisition and Operation Exemption—Carolina Rail Service, LLC. In that proceeding, MHSF seeks to acquire from Carolina Rail Service, LLC (CRS), and operate CRS's exclusive freight easement over all railroad tracks at the Port of Morehead City, NC.¹

¹ The transaction includes approximately 0.87 miles of rail line in Carteret County, NC, from approximately milepost 0.0 (in or near Morehead City) to approximately milepost 0.87 at Gallants Channel (in or near Morehead City), serving the intermediate stations of Marsh Island and Radio Island, as well as all spur tracks, yard tracks, side tracks, interchange tracks and industrial tracks located on the Port. The transaction also includes approximately 4 miles of intra-terminal track.

The tracks are owned by North Carolina State Ports Authority (SPA).² MHSF will operate over the rail property pursuant to an operating agreement with SPA.

G&O is a noncarrier that currently controls eight Class III rail carriers:

Chattahoochee & Gulf Railroad Co., Inc. (CGR); Conecuh Valley Railroad Co., Inc. (CVR); Knoxville & Holston River Railroad Co., Inc. (KHR); Laurinburg & Southern Railroad Co., Inc. (LSR); Piedmont & Atlantic Railroad, Inc. (PAR); which operates under the trade name of Yadkin Valley Railroad, Rocky Mount & Western Railroad Co., Inc. (RMW); Three Notch Railroad Co., Inc. (TNR); and Wiregrass Central Railroad Company, Inc. (WCR). The Claussens, also noncarriers, control G&O and one Class III rail carrier, H&S Railroad, Inc. (H&S).

Applicants state that: (1) the rail lines operated by CGR, CVR KHR, LSR, PAR, RMW, TNR, WCR, and H&S do not connect with the rail line being acquired by MHSF; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by MHSF with applicants' rail lines; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

The purpose of establishing MHSF and acquiring the line in STB Finance Docket No. 34748 is to insulate the other affiliated railroads from the financial, legal, and operational risks associated with the transactions contemplated in that proceeding.

² The Board previously determined that SPA's acquisition of the subject line did not require Board action and it declined to exercise jurisdiction over the transaction. See North Carolina State Ports Authority—Acquisition Exemption—North Carolina Ports Railway Commission, STB Finance Docket No. 34258 (STB served Oct. 31, 2002).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34749, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th St., N.W., Fifth Floor, Washington, DC 20036-1609.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: September 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary